Simon Devonshire KC



Silk: 2009 Call: 1988

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Simon was called in 1988 and took silk in 2009. He is a leading KC practicing in all areas of statutory and contractual/commercial employment law, but with a particular emphasis on (i) inter-business competition issues (including confidential information, restrictive covenants and the poaching of employees in unlawful team moves), (ii) employee/business owner fraud, (iii) the attempted diversion of business opportunities by employee fiduciaries, and (iv) whistle-blowing, discrimination and TUPE disputes. He also has considerable experience in the sports forum, in disputes between LLP members, in the management and control of repeated/vexatious litigation, and in the conduct of internal investigations.

> ***...commended for his expertise on injunction work and team moves ... attracts clients due to his smart brain and technical excellence.***
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> CHAMBERS & PARTNERS

Expertise

Employment

In the High Court, Simon regularly acts in fraud, business diversion and employee competition disputes. He is described in the directories as a *"go-to silk for non-compete disputes"* and frequently acts (for both sides) in confidential information, restrictive covenant, team move and business diversion cases (in both the employment and the LLP settings). Other related areas of expertise include actions for injunctions to restrain or curtail domestic disciplinary proceedings (particularly in the NHS context) and the control of repeated litigation by disgruntled employees.

Recent reported and/or important cases include Red Bull -v- Fallows [2021] EWHC 3502 (QB) (disclosure necessary to test restraint of trade claims in the garden leave context); Capita -v- Darch {2017] IRLR 718 (threshold for interim injunctive relief in team move disputes); **Samara –v- MBI Partners** [2016] EWHC 441 (QB) (abuse of process arising out of recidivist litigation); **Dorma UK Ltd –v- Batemen** [2015] EWHC 4142 (QB) [2016] IRLR 616 (springboard relief arising out of an alleged team move); **Miller –v- Gardiner & Ors** [2015] EWHC 1712 (Ch) & [2015] EWHC 288 (Ch) (extended CRO against litigant repeatedly bringing misconceived claims); **Thomson Ecology –v- APEM** [2014] IRLR 184 (summary judgment and disclosure orders in team move cases); **CEF Holdings -v- Mundey & Ors** [2012] FSR 35 (the limits of springboard relief and the obligations of a party moving the court without notice); **BGC –v- Rees & Tullett Prebon** [2011] EWHC 2009 (QB) (Tullett did not procure Rees to breach his contract of employment with BGC when recruiting him); **Capital for Enterprise -v- Malik & Ors** [2010] EWHC 343 (Ch) (disclosure obligations and freezing injunctions); **Bezant –v- Rausing & Ors** [2007] EWHC 1118 (QB) (it was an abuse of process for a claimant, after his claims under employment law had failed, to seek to invoke the law of tort against directors and other professionals associated with his employment/dismissal, to seek to recover his alleged losses).

> ***Simon Devonshire is supremely bright and the person to go to for highly technical work.***
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> CHAMBERS AND PARTNERS

On the statutory front, Simon is noted in the directories for his strength *"in structuring his arguments in a way that finds favour with the Employment Tribunal, and in making persuasive submissions".* He frequently acts for banks and financial institutions in high value claims and continues to handle a large number of whistle-blowing disputes, arising particularly in the financial services sector. He also advises on contentious and no-contentious TUPE issues, particularly in respect of outsourcing and change of contractor disputes and on the TUPE implications of commercial transactions. He recently acted for the successful party in arguing that variations to personal terms agreed by employee/directors in anticipation of a transfer were void under TUPE. He has acted for a number of NHS bodies following the outsourcing of care to persons with learning disabilities, and successfully defended a firm of solicitors against a claim that it had inherited TUPE liabilities for the employees of one of its competitors.

Recent reported and/or important cases include: Ferguson -v- Astrea [2020] IRLR 550 (the first case to consider whether beneficial variations were void under TUPE and the application of the EU abuse of rights principle to TUPE claims); Sattar -v- Citibank [2020] IRLR 104 (procedural fairness in dismissal and disability contexts following the dismissal of Citi's Global Head of Treasury); **Allsop –v- Christiani & Nielsen Ltd** (in Administration) [2012] UKEAT/0241/11/JOJ (limitation and jurisdiction in Wages Act claims); **Royal Cornwall Hospital Trust –v- Watkinson** [2011] Med LR 636 (whistleblowing in an NHS trust); **Ward Hadaway –v- Love & Ors** [2010] UKEAT/0471/09/SM (the winning of a contract to provide legal services to the NMC did not constitute a service provision change within the meaning of TUPE 2006, and the successful tenderer did not assume liability for the dedicated team of lawyers retained by his predecessor); **New ISG –v- Vernon & Ors** [2008] ICR 319 (a purposive construction should be given to reg 4(7) of TUPE 2006, so as to accord with the fundamental freedom of the employee to choose who he works for, and to permit and recognise the effectiveness of a post transfer objection where the employee does not know of the identity of the transferee or of his right to object pre transfer. In consequence, the transferee could not enforce post termination restrictive covenants against 'objecting' employees); **Croke –v- Hydro** [2007] ICR 1303 (an individual providing services through his own limited company to an end user via an employment agency was a worker for the purposes of the whistle-blowing provisions); **Perkin –v- St George's NHS Trust** [2006] ICR 617 (awkward personality as the justification for the dismissal of a self-proclaimed whistleblower).

Commercial Litigation

Simon has a busy High Court practice in the fields of commercial and business law, typically (though not exclusively) arising out of commercial disputes with an employment twist. Simon's practice encompasses: (i) civil fraud and associated injunctive, monetary and proprietary remedies; (ii) the construction and interpretation of commercial contracts; (iii) partnership and LLP disputes; and (iv) business protection, including the enforcement of post termination restrictive covenants, the enforcement of obligations of confidence, fiduciary obligations, data recovery, and associated injunctive and springboard relief. He also has particular experience in cases involving judicial control of vexatious and abusive litigation.

Civil Fraud

In the fraud context, Simon regularly acts for employers seeking to recover and/or trace stolen money into substitute assets. He recently acted for a FTSE 100 property development company arising out of the unlawful diversion by its JV partner of the opportunity to acquire a substantial development site, and against a director who had diverted the opportunity to open a multi-million pound luxury car dealership in the Midlands. He acted for the claimant in a £50M fraud action arising out of the alleged miss-sale of a freight forwarding business. He acted for three venture capital funds in **Capital for Enterprise -v- Malik & Ors** [2010] EWHC 343 (Ch), in successfully resisting claims by multiple defendants to set aside freezing inunctions obtained on the basis of an alleged fraud/conspiracy in running a 'Ponzi Scheme' bridging loan business.

Commercial Contract

Simon is frequently called upon to advise on the meaning, effect, enforcement and proper construction of commercial contracts, including post termination restrictions, indemnities and repayment clauses, Romalpa or retention of title clauses, and commercial TUPE provisions. He has been noted in the Directories for "taking a commercial, practical approach to problems … [and] his ability to boil things down and explain them concisely".

Partnership

In the LLP context, Simon has acted in a large number of confidential arbitrations, including for a hedge fund in a multi-million pound claim against a departing member alleged to have orchestrated a team move, for a substantial solicitor's practice in the enforcement of anti-team move covenants agreed by the membership as a whole after serious damage to its business from a series of team moves, and for a leading London Firm on the question whether the repudiatory breach doctrine can be relied upon to terminate an LLP agreement.

Business Protection

Simon regularly acts in business protection cases, in cases involving the misuse of confidential information, breaches of fiduciary obligation, pre-termination employee competition and post termination restrictive covenants. Simon has been noted in the directories for his excellence on "restrictive covenants, team move and breach of fiduciary duty cases … He's outstanding – his depth of knowledge and his ability to consolidate serious issues and make sense of it all is superb". Recent reported and/or important cases include Red Bull -v- Fallows [2021] EWHC 3502 (QB) (restraint of trade and garden leave); Capita -v- Darch {2017] IRLR 718 (threshold for interim injunctive relief in team move disputes); **Dorma UK Ltd –v- Batemen** [2015] EWHC 4142 (QB) [2016] IRLR 616 (springboard relief arising out of an alleged team move); **Thomson Ecology –v- APEM** [2014] IRLR 184 (summary judgment and disclosure orders in team move cases); **CEF Holdings -v- Mundey & Ors** [2012] FSR 35 (the limits of springboard relief and the obligations of a party moving the court without notice);); **BGC –v- Rees & Tullett Prebon** [2011] EWHC 2009 (QB) (Tullett did not procure Rees to breach his contract of employment with BGC when recruiting him); **New ISG –v- Vernon** [2008] ICR 319 (the enforcement of restrictive covenants against an employee who had opted out of TUPE); and **Allan Janes –v- Johal** [2006] ICR 742 (the enforceability of a restrictive covenant in a solicitor's contract).

Procedural

Simon has particular experience in the judicial control of vexatious litigation. Examples include: **Samara –v- MBI Partners** [2016] EWHC 441 (QB) (abuse of process arising out of recidivist litigation); **Miller –v- Gardiner & Ors** [2015] EWHC 1712 (Ch) & [2015] EWHC 288 (Ch) (extended CRO against litigant repeatedly bringing misconceived claims in respect of his alleged rights to exploit recordings of performances by the late Jimmi Hendrix); **Bezant –v- Rausing & Ors** [2007] EWHC 1118 (QB) (it was an abuse of process for a claimant, after his claims under employment law had failed, to seek to invoke the law of tort against directors and other professionals associated with his employment/dismissal, to seek to recover his alleged losses, and such conduct justified the making of an Extended CRO); and (in the statutory employment context); and **Allsop –v- Christiani & Nielsen Ltd (in Administration)** [2012] UKEAT/0241/11/JOJ (dismissal of wages act claims brought substantially out of time by an 'employee' on long term sick leave, alleging the adoption of his contract by the administrators).

Media & Data Privacy

Simon has considerable experience of recording, publishing, copyright and management disputes in the music, media and entertainment industry. Clients have included the Musicians Union, All Saints, Echobelly, the Cradle of Filth, the Gypsy Priests, Right Said Fred, Vital Distribution, Mungo Jerry and Gordon Ramsay. Simon recently acted for various representatives of the Hendrix Estate and their advisers in resisting claims that the defendant was free to exploit recordings of live performances given by the late Jimmi Hendrix; **Miller –v- Gardiner & Ors** [2015] EWHC 1712 (Ch) & [2015] EWHC 288 (Ch)

Sport

Simon specialises in contractual disputes in the sporting field. He has acted for World and European champion boxers, boxing promoters, various professional football and rugby league clubs, and a Formula One racing driver. He recently acted for the successful party in **Red Bull -v- Fallows** [2021] EWHC 3502 (QB).

Investigations

Simon has conducted a number of internal investigations, for clients as diverse as the University of Oxford and the Australian High Commission, as well as in the commercial/financial services context.

Recent cases

Red Bull –v- Fallows
[2021] EWHC 3502 (QB)
Appropriate disclosure to test a claim that the enforcement of a garden leave clause was an unlawful restraint of trade.

Ferguson -v- Astrea
[2020] IRLR 577
Enhanced terms agreed by employee-directors shortly before a TUPE transfer void under the domestic Regulations and on the application of the EU abuse of rights principle.

Sattar –v- Citibank
[2019] EWCA Civ 2000; [2020] IRLR 104
Bank acted fairly in determining the employment of its Head of Treasury, notwithstanding his disability and criticisms that could be made of the procedure adopted.

Capita –v- Darch
[2017] EWHC 1248 (Ch) & 1401 (Ch); [2017] IRLR 718 (QB)
Application for extensive suite of injunctive relief dismissed with costs in the absence of proper evidence of threatened breaches.

Samara –v- MBI Partners
[2016] EWHC 441 (QB)
Attempt to make second application to set aside a default judgement was an abuse of the process and justified the making of a CRO.

Dorma UK –v- Bateman
[2015] EWHC 4142 (QB); [2016] IRLR 616
Employer granted springboard injunction until trial to restrain its former employees from working for a competitor or poaching customers.

Miller –v- Gardiner & Ors
[2015] EWHC 1712 (Ch) & [2015] EWHC 288 (Ch)
Extended CRO made against litigant repeatedly bringing misconceived claims asserting rights to exploit live recordings of performances by the late Jimmi Hendrix.

CEF & Ors –v- Mundey & Ors
[2012] EWHC 1524 (QB); [2012] FSR 35
Simon acted for 11 of the employee defendants in setting aside orders obtained on short notice for material non-disclosure in an alleged unlawful competition case. The decision also contains important messages about the nature of the evidence necessary to support an application for interim springboard relief and the extent of the English court's jurisdiction when tort claims are asserted against non-domicile employee defendants.

Allsop –v- Christiani & Nielsen Ltd (in Administration)
[2012] UKEAT/0241/11/JOJ
Dismissal of Wages Act claims brought substantially out of time by an 'employee' on long term sick leave alleging that adoption of his contract by the administrators.

BGC –v- Ress & Tullett Prebon
[2011] EWHC 2009 (QB)
A spin off from the main Tullett Prebon litigation – in which Simon had been involved as part of Tullett's pre-trial team, particularly in the settling of pleadings – this case concerned Tullett's recruitment of a broker to mitigate the effects of BGC's unlawful conspiracy/poaching raid in [2010] EWHC 484 (QB). It was alleged that this had involved Tullett in unlawful conspiracy and procurement by Rees of his obligations to BGC. Tullett successfully resisted these claims – notwithstanding that Rees was found to have acted in breach of his obligations to BGC – and satisfied the Court that even if there had been breaches, they disclosed no recoverable loss.

Watkinson –v- Royal Cornwall Hospital Trust
(2011) UKEAT/0378/10/DM [2011] Med LR 636
Simon acted for the trust in a whistleblowing claim brought by its former CEO.

Capital for Enterprise Fund ALP & Ors –v- Malik & Ors
[2010] EWHC Ch 343
Simon successfully resisted an application to set aside freezing injunctions by multiple defendants in a conspiracy/fraud case involving an alleged 'Ponzi Scheme' bridging loan business, following a protracted interlocutory battle. The injunctions were maintained over to speedy trial, and the allegations of material non-disclosure rejected.

Ward Hadaway –v- Love & Ors
[2010] UKEAT/0471/09/SM
The winning of a contract to provide legal services to the NMC did not constitute a service provision change within the meaning of TUPE 2006, and the successful tenderer did not assume liability for the dedicated team of lawyers retained by his predecessor.

New ISG –v- Vernon
[2008] ICR 319
A purposive construction should be given to reg 4(7) of TUPE 2006, so as to accord with the fundamental freedom of the employee to choose who he works for, and to permit and recognise the effectiveness of a post-transfer objection where the employee does not know of the identity of the transferee or of his right to object pre transfer. In consequence, the transferee could not enforce post termination restrictive covenants against 'objecting' employees.

Bezant –v- Rausing & Ors
[2007] EWHC 1118 (QB)
It was an abuse of process for a claimant – after his claims under employment law had failed – to seek to invoke the law of tort against directors and other professionals associated with his employment/dismissal, to seek to recover his alleged losses. Such conduct justified the making of an Extended CRO.

Croke –v- Hydro
[2007] ICR 1304
An individual providing his services through his own limited company to an end user via an employment agency was a worker for the purposes of the whistleblowing provisions.

Allan Janes –v- Johal
[2006] ICR 742
Concerning the enforceability of a restrictive covenants in a solicitor's contract.

Perkin v St. Georges NHS Trust
[2006] ICR 617
Alleged whistleblower in fact dismissed for inability to get on with colleagues; and although his dismissal was unfair, compensation permissibly reduced to zero on the application of the contributory fault and 'Polkey Chance' principles.

Virgo Fidelis Senior School v. Boyle
[2004] ICR 1210, EAT
Assessing compensation for injury to feelings in the whistleblowing context.

Breeze Benton v Weddell
[2004] All ER (D) 225
Judicial bias and 'recusal' in employment tribunals).

P & O Trans European v Initial Transport Services and Ors
[2003] IRLR 128
TUPE transfers in asset intensive industries following the ECJ decision in *Liskojarvi*.

Achievements

News, Articles & Publications

For Simon's analysis of a number of the key recent cases, see the 11KBW Employment Law Blog. Copies of his papers and slides for the annual Chambers employment law conference are on the 11KBW website.

Garden Leave Injunctions in the Sporting Arena [2004] ISLR 15

Education

Kings School, Canterbury

Magdelen College, Oxford (BA, Jurisprudence)

Other

Professional memberships:

- Employment Law Bar Association
- Employment Lawyers Association
- London Commercial Law Bar Association

Simon has owned and raced the Thames Sailing Barge Marjorie since 1993, and holds an MCA/DTI Master's ticket. He has exhibited his own paintings with the Royal Society of Marine Artists on a number of occasions.

> ***... a go-to silk for non-compete disputes ... provides excellent client service – he is very responsive and happy to roll up his sleeves in a case.***
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> CHAMBERS & PARTNERS

> ***An extremely hands-on barrister who gives excellent service.***
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> CHAMBERS & PARTNERS

> ***... His advocacy skills were very good – he made mincemeat of his opponents and he did an extremely good job***
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> CHAMBERS & PARTNERS

> ***... He is extremely responsive and very good with clients – we feel that we are in safe hands***
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> CHAMBERS & PARTNERS

> ***... His advocacy ... robustness and tenacity always places the client in the strongest position***
>
> LEGAL 500

> ***...a wonderfully pragmatic barrister who is a joy to work with***
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> CHAMBERS & PARTNERS

...he has a quiet, confident, comfortable style

CHAMBERS & PARTNERS

... works incredibly hard on his preparation ... particularly strong in structuring his arguments in a way that finds favour with the Employment Tribunal, and in making persuasive submissions. A safe bet on every occasion.'

LEGAL 500

...is incredibly bright and hugely persuasive in court

LEGAL 500